sold. The city then should be required to enforce its lien against the property in the possession of such vendee, and in that way satisfy its claim for taxes. If it failed to collect by enforcement of its lien, they should be paid out of the assets in the hands of the trustee. But unless resort to these is necessary, the assets should not be taken out of the hands of the trustee, to the injury of the general creditors, and paid out for the benefit of the vendee at the execution sale. See BRANDENBURG ON BANKRUPTCY (2nd Ed.) 608; *In re Veitch*, 101 Fed. 251; *In re Conheim*, 100 Fed. 268; *In re Hollenfeltz*, 94 Fed. 629; *Foster* v. *Inglee*, 13 Nat. Bankr. R. 239, Fed. Cas. 4973.

CARRIERS—DEATH BY WRONGFUL ACT—STIPULATIONS AVOIDING LIABILITY FOR NEGLIGENCE TOWARD FREE PASSENGER—VALIDITY AND EFFECT.—J. H. Adams was a lawyer, residing in Spokane, Wash., and in his capacity as attorney for several railway companies, often traveled over petitioner's road on passes, though not employed by it. On November 13th, 1898, he started on one of petitioner's trains from Hope, Idaho, to Spokane. The passenger coaches were made up into the train behind the express car, in the following order: smoking car, day coach, tourist sleeper, dining car, and Pullman sleeper. All were vestibuled except the tourist sleeper, immediately in front of the dining car, which had open platforms. Adams, shortly after leaving Hope, passed from the smoking car, through the day coach and tourist sleeper, to the dining car, purchased some cigars and started to return. This was the last seen of him alive. His body was found the next day opposite a sharp curve, not far from Hope. It was shown that the train was running at a high rate of speed, but it was not shown whether he stumbled and fell, or was thrown from the train by a sudden lurching. Adams was riding on a free pass, subject to the following conditions, which he had *signed:* "The person accepting this free ticket agrees that the Northern Pacific Railway Company shall not be liable under any circumstances, whether of negligence, or otherwise, for any injury to the person, or for any loss or damage to the property of the passenger using the same. I accept these conditions, Jay H. Adams. This pass will not be honored unless signed in ink by the person to whom issued." In an action brought by the widow and son of the deceased, *Held*, such a stipulation in a railway pass violates no rule of public policy and relieves the company from liability for personal injuries resulting from ordinary negligence of its employees to one riding on the pass, who has accepted it with knowledge of its conditions. *Northern Pacific Railway Company* v. *Adams* (1904), —U. S. —, 24 Sup. Ct. Rep. 408.

This is the first case upon the liability of a common carrier for negligence toward a gratuitous passenger, which has come squarely before the United States supreme court. The question has been decided by many of the state courts, but the decisions are in conflict. The court holds that the heirs of Adams had no greater or different rights by the statute of Idaho giving an action for death by wrongful act, than Adams would have had himself, and that, as to Adams, the railroad company was not a carrier for hire, since the company had waived its right to compensation in return for his signing the conditions relieving the company from liability for any injury to the person, under any circumstances, whether from negligence or otherwise. "He freely and voluntarily chose to accept the privilege offered; and having accepted that privilege, cannot repudiate the conditions." In *Philadelphia & R. R. Co.* v. *Derby*, 14 How. 468, Derby, though a free passenger, was allowed to recover, since there was no stipulation concerning the risk of negligence, and too, the company was guilty of gross negligence. Adams entered the train "as a licensee, upon conditions which he with full knowledge, accepted,"

and was not a passenger for hire as were the parties in *R. R. Co.* v. *Lockwood*, 17 Wall. 357, 21 L. Ed. 627, and *Grand Trunk R. R. Co.* v. *Stevens*, 95 U. S. 655. See also *Voight* v. *R. R.*, 176 U. S. 498, 20 Sup. Ct., Rep. 385. The principal case is supported by the weight of authority, and since the parties were free to enter into the contract, upon principle, the stipulations violated no rule of public policy. See *Duff* v. *Great Northern R. Co.*, Ir. L. R. 4 C. L. 178; *Payne* v. *R. R. Co.*, 157 Ind. 616, 56 L. R. A. 472; same, though not signing the agreement, *Quimby* v. *Boston & Maine R. Co.*, 150 Mass. 365, 5 L. R. A. 846, 23 N. E. Rep. 205. *Contra*, *Mobile & O. R. Co.* v. *Hopkins*, 41 Ala. 486, 94 Am. Dec. 607; *Gulf R. Co.* v. *McGown*, 65 Tex. 640. See also ELLIOT ON RAILROADS, Vol. 4, Secs. 1497-1498. This case, however, does not hold that a gratuitous passenger cannot recover in the absence of stipulations on the part of the company, nor that in cases of wilful or wanton negligence recovery would be denied. As to the questions of stipulations against liability in the case of passengers for hire, the liability of a railroad company is unchanged by this decision.

CARRIERS—SIGNED TICKET NOT THE CONTRACT.—Defendant operated a special train known as the Owl, with a limited number of sleepers, and with no accommodation for passengers except those having berths. The plaintiff applied for a ticket on this train, and was informed that such ticket would not be good unless he had a berth. He then purchased the ticket which recited that it was good only on the Owl train, but said nothing about berth requirements. He then tried to purchase a berth, but was told that they were all sold. He then boarded the train, although again told that he could not ride without a berth ticket. He was ejected, and brings this action for damages. *Held*, that he cannot recover. *Ames* v. *Southern Pacific Co.* (1904), — Cal. —, 75 Pac. Rep. 310.

The majority of the court hold in accordance with the great weight of authority that a ticket is not a contract, but a mere token, and hence the real contract may be shown. *Elmore* v. *Sands*, 54 N. Y. 512; *Rawson* v. *Railroad Co.*, 48 N. Y. 212. The dissenting opinion, however, holds that where a ticket is signed by both parties it becomes a contract binding on the parties so far as it expresses the terms thereof, and hence that parol evidence is inadmissible to prove that an unconditional written obligation is not to be performed except upon a continuency not stated in the writing.

CONSTITUTIONAL LAW—CLASS LEGISLATION—USE OF FLAG FOR ADVERTISING PURPOSES.—Defendant was imprisoned for having in his possession for sale cigars, in boxes, upon which was printed a representation of the American flag. Penal code, § 640, prohibits the use of the American flag for advertising purposes to merchants and manufacturers, but permits publishers, jewelers and stationers to use the symbol in their business. *Held*, unconstitutional as class legislation. *People* v. *Van De Car* (1904), — N. Y. —, 86 N. Y. Supp. 644.

The decision seems clearly right. Such legislation can be enforced only as an exercise of the police power and it is difficult to see how a representation of the national flag upon the cover of a cigar box would be any more likely to endanger the public health, safety or morals, than when printed upon the cover of a book. Such a symbol could no more make a bad book good than it could make a box of good cigars bad. During the Spanish war considerable popular feeling was aroused by the indiscriminate use of the flag for commercial purposes, and since then a number of states have enacted laws restraining such use. In 1899, Illinois passed an act making it unlawful to